

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

CIVIL NO. 01-1803 (RLA)

6 A) \$58,920.00 IN U.S. CURRENCY
7 B) \$38,670.00 IN U.S. CURRENCY

8 Defendants.

9

10 OPINION AND ORDER

11 MIGUEL REYES and PATRICIO GONZALEZ, Claimants in this
12 foreclosure action, filed a motion for summary judgment pursuant to
13 Fed. R. Civ. P. 56(c) (docket No. 38), asking the Court to order the
14 return of the monies seized from them on February 20, 2001.
15 Claimants allege lack of probable cause on the part of the
16 Government. The United States government has opposed. See United
17 States Opposition to Motion for Summary Judgment (docket No. 49).

18 The Court having reviewed the memoranda submitted by the parties
19 as well as the applicable law, hereby **GRANTS** claimants' motion for
20 summary judgment for the reasons set forth below.

21 **FACTUAL BACKGROUND**

22 On February 20, 2001, the claimants traveled from New York City,
23 New York to San Juan, Puerto Rico on American Airlines flight No.
24 677. According to their deposition, claimants traveled wearing
25 normal clothes, jeans, t-shirts, casual clothing. REYES was wearing
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3 a black leather overcoat; his hair was in combed dreadlocks from the
4 front to the back of his head.

5 After claimants deplaned and were walking towards the exit of
6 the Luis Muñoz Marín International Airport, GONZALEZ, who was walking
7 behind REYES, noticed that an agent had begun to follow REYES. What
8 follows is described by Task Force Agent Damaris Lebrón in her
9 deposition: She and Task Force Agent Borges "...entered through the
10 security point of Gate 5 [and] we were on our way on the hallway
11 between Gate 5 and Gate 8, and when we got to Gate 8, we realized
12 that the New York flight was coming out, it had just arrived."
13 Continuing, she declared that "when some passengers had already come
14 down, they had already left Gate 8, we observed a young man, a tall
15 young man, with a carry on bag, suitcase, dressed with a black
16 jacket, he passed us, we observed him when he passed us. All of a
17 sudden, we observed that the young man stopped and look[ed]
18 backwards, looking as if somebody was coming behind him. All of a
19 sudden, we observe another young man also, a tall man, also came with
20 a carry on, the dressing is, the clothing is similar to that one worn
21 by the young man who turned around, who looked back."

22 She added that "[w]hen the first one looked backwards and saw
23 the other young man that came, was coming, well, he continued
24 walking... [t]hey continued walking and we decided what procedure,
25 just followed them to see where they were going and the one in the

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2 front always looked back to see that the person was coming close to
3 him."

4 She further added that "[t]hese young men instead of going to
5 the baggage area to be picked up or to take a cab, and these young
6 men instead of going down, they went through the security center #5.
7 When they went out through the revolving doors, the person who was,
8 the young man who was in front, again looked to the back to see if
9 the other person was following. They went pas[t] the area where the
10 Agriculture machine is located and they went towards the front of the
11 American Airlines area. Instead of waiting for someone to pick them
12 up, they crossed the street and went towards the parking, always the
13 person in front would look towards the back to see if the young man
14 was following him."

15 She also declared that "[t]hey were walking pretty fast but the
16 young man in the front always [looking] to the young man in the back"
17 and that the agents were observing them from a distance of about
18 eight feet behind. The agents followed the claimants and observed
19 that when they entered the parking lot, they were going pretty
20 fast,... no[t] running... "but they were walking pretty fast."

21 When the agents arrived at the first stairway of the parking
22 lot, which is on the left-hand side, they stayed with the second
23 young man and Agent Borges requested the other young man to stop.
24 This was confirmed by Agent Borges in his statement:

25 "... we noticed that when he was walking, he was using a
26 pretty fast pace, but he was looking back to see if he

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2 could spot somebody or looking for someone, so he just
3 continued his pace. As he walked on, he just kept on
4 looking towards the back. The other person, which is the
5 man next to him, they were both on the same trail, when
6 they got to gate 5, instead of going downstairs to pick up
luggage, they just walked out through the security check
point on Gate 5 and from there, went straight towards the
parking lot."

7 Upon arrival to the parking lot, they were approached by Task
8 Force Agents Angel Borges and Damaris E. Lebrón. Agent Borges
9 ordered them to stop and began interrogating REYES. He, REYES, was
10 asked if he was carrying a large amount of money, to which he
11 answered in the negative. At no time was he asked if he was carrying
12 narcotics. Agent Borges further declared in his deposition that they
13 (Borges and Lebrón) identified themselves as Task force agents for
14 the DEA, and asked claimants for a photo ID and a boarding pass.
15 REYES provided a driver's license and a boarding pass. He was asked
16 if he was traveling alone and he stated that he was. Then REYES was
17 asked if the agents could search his roller-type suitcase, to which
18 he agreed. Agent Borges declared that the reason he decided to ask
19 if REYES was carrying a large amount of money was because he noticed
20 that the claimant was very nervous.

21 Agent Borges then ordered REYES to open his suitcase. REYES
22 agreed and proceeded to remove his clothes from the suitcase. When
23 Borges pulled up on a pair of jeans, money spilled out to the floor.
24 A total of \$38,670.00 was found. When asked by Agent Borges where
25 the money came from, REYES indicated that it came from earnings of
26 his music career, business and an insurance claim. While they were

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2 still at the parking lot, REYES offered to provide evidence that the
3 money came from legal sources and that it was in his van parked
4 nearby. According to REYES, the offer was denied by the agents.
5 Instead, Agent Borges ordered REYES to accompany them to the office
6 of the Drug Enforcement Administration (DEA), located in the basement
7 of the airport, for an interview related to the case. He informed
8 REYES that he was not arrested, but could leave whenever he wanted
9 and should wait for a receipt in case the money should be seized.
10 According to Lebrón's deposition testimony, REYES could leave despite
11 the fact that "he had not provided the legal source for the money and
12 the contradiction of the two young men, one was saying yes the other
13 one saying no."

14 While Agent Borges was searching REYES' suitcase, Agent Lebrón
15 intervened with claimant GONZALEZ, about 15 feet away from REYES.
16 Lebrón claims that she identified herself, asked if she could speak
17 with him (GONZALEZ) for a moment, to which he agreed. She asked him
18 if he was with REYES and he said no. Agent Lebrón asked him for
19 identification and his boarding pass; GONZALEZ provided his Dominican
20 passport and his residence card. As to his boarding pass, GONZALEZ
21 indicated he had left it on the seat of the plane. Agent Lebrón
22 asked him where he traveled from, if he traveled alone, or if he knew
23 REYES. He told her that he traveled alone to New York and that he
24 did not know REYES. The agent asked whether he had money with him
25 and GONZALEZ answered that he had around \$30,000. Asked as to why he
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3 had such large sums, claimant responded that it was to buy cars in
4 auctions to resell them in Puerto Rico. At that moment his luggage
5 was not searched and at no time did the agent ask him if he had any
6 narcotics.

7 Agent Lebrón continued interrogating claimant GONZALEZ. She
8 asked him to identify the origin and legal source of the money.
9 GONZALEZ told her that he had sold a money transfer agency and a taxi
10 license for Puerto Rico. He informed her that he had sold the latter
11 in Puerto Rico but had taken the proceeds to New York to purchase
12 some vehicles. GONZALEZ claimed that he did not like the vehicles he
13 saw in New York, so he returned with the money. Agent Lebrón then
14 asked claimant GONZALEZ whether he had any evidence regarding the
15 sales of the money transfer agency and the taxi license. GONZALEZ
16 indicated that he did not have the documentation with him but he
17 could provide it as soon as he got to his house. Agent Lebrón then
18 asked him for authorization to search his suitcase, to which he
19 consented, but Agent Lebrón did not search it at that time.

20 When they arrived at the DEA office they were placed in separate
21 rooms. Agent Borges continued to question REYES about the money, its
22 source and the reasons why he was traveling with such large sums.
23 REYES reiterated that the money was to buy cars in auctions to resell
24 them in Puerto Rico. Agent Borges inquired if the money had anything
25 to do with drugs. At that point REYES offered to provide the
26 documentation, which was in his car in the parking lot. He was

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3 informed that they needed to count the money; that he was not
4 detained; however, if he wanted to recover the money he would have to
5 wait until the money was counted.

6 When all parties arrived at the DEA office, the Agents asked the
7 K-9 handler to escort the K-9 through the suitcases. At this point,
8 Gonzalez' suitcase still had not been opened. When the K-9 alerted
9 as to a possible positive to contamination, GONZALEZ was asked to
10 open the suitcase. GONZALEZ acquiesced and Agent Lebrón searched it,
11 finding the cash in question. No drugs were discovered.

12 Agent Lebrón proceeded to inform GONZALEZ that he was not
13 detained, that if the money was not his he could leave and nothing
14 would happen to him. According to GONZALEZ, he declined because the
15 money represented part of his savings which he did not want to lose.

16 While at the DEA office the agents conducted a background check
17 of claimants' documents in all fifty states, Puerto Rico, and the
18 federal jurisdiction, but nothing incriminating was reported.

19 Finally, claimants were informed that the money was being
20 confiscated because they had not reported it. The agents informed
21 REYES that his money was being confiscated because he had no evidence
22 to justify having that amount of money with him, and because they
23 believed that he was engaged in money laundering.

24 According to Agent Lebrón, she had probable cause to confiscate
25 the money based on the following: 1) claimants had not been able to
26 provide the documentation demonstrating the legality of the monies;

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2 and 2) conflicting stories among the claimants themselves. Agent
3 Lebrón acknowledged that these facts and the K-9 alert were the only
4 facts that led her to conclude that she had probable cause to believe
5 that the money was the product of an illegal activity.
6

7 Along these lines, Agent Borges stated:

8 We seized the money, one, because as soon as he got off of
9 the aircraft, we notice[d], or I notice[d] that he was very
10 nervous, second, as soon as I asked him if he was traveling
11 with someone, he lied to me, he said no that he was alone,
12 third, I asked him if he had a large amount of money, which
he responded to in the negative, which is no, after that,
when we get to the office, then he changes his version and
that he is traveling with the other man. We seized the
money, we needed documentation of where did he get that
money from.

13 It appears that the only thing that called his attention was
14 that REYES was nervous and that he was looking back, as though
15 looking for someone. Apparently this was thought to be sufficient
16 evidence that claimant was engaged in some unspecified unlawful
17 activity.

18 After the monies were seized and this civil forfeiture action
19 commenced, Claimants submitted to the government the documentation
20 pertinent to the legality of the seized monies, as follows:

21 (a) Proof of sale of a business by claimant Patricio González
22 Inoa for \$42,000.00 on February 16, 2001;
23 (b) Proof of the sale of a taxi license for \$9,000.00 by
24 Patricio González Inoa;

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2 (c) An insurance claim of \$50,605.00 by claimant Miguel Reyes
3 Ballista for loss of property in his business during a
4 burglary and fire.

5 The government also received copies of claimants' income tax
6 returns from 1997 to 2000 which show that they were engaged in legal
7 businesses.

8 The government proffered no evidence to impeach the
9 aforementioned documentation.

10 **SUMMARY JUDGMENT STANDARD**

11 Summary judgment is appropriate when "the pleadings,
12 depositions, answers to interrogatories, and admissions on file,
13 together with affidavits, if any, show that there is no genuine issue
14 as to any material fact and that the moving party is entitled to a
15 judgment as a matter of law." Fed. R. Civ. P. 56(c); Santiago
16 Clemente v. Executive Airlines, Inc., 7 F. Supp.2d. 114 (D.P.R.
17 1998); aff'd, 213 F.3d 25 (1st Cir. 2000).

18 Not every factual controversy bars access to summary judgment.
19 The mere presence of some alleged factual conflicts among the parties
20 will not defeat a proper motion for summary judgment; the requirement
21 is that there be no genuine issue of material fact. Hodgens v. Gen.
22 Dynamics Corp., 144 F.3d 151, 158 (1st Cir. 1998); Wadsworth, Inc.
23 v. Schwarz-Nin, 951 F. Supp. 314 (D.P.R. 1996); Preussag Int'l Steel
24 Corp. v. Interacero, Inc., 951 F. Supp. 338 (D.P.R. 1997).

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2 The U.S. Supreme Court, in its leading case regarding the
3 summary judgment standard, established that:

4 The plain language of Rule 56(c) mandates the entry of
5 summary judgment, after adequate time for discovery and upon
6 motion, against a party who fails to make a showing
7 sufficient to establish the existence of an element
essential to the party's case, and on which that party will
bear the burden of proof at trial.

8 Connell v. Bank of Boston, 924 F.2d 1169, 1172 (1st Cir. 1991)
9 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 91 L. Ed. 2d 265, 106
10 S. Ct. 2548 (1986)).

11 Celotex allows the movant to seek summary judgment based on the
12 adverse party's failure to establish an element essential to its case
13 and on which that party bears the burden of proof. The only
14 requirement is that there be "adequate time for discovery."

15 "If the moving party demonstrates that there is an absence of
16 evidence to support the non-moving party's case, the burden shifts to
17 the non-moving party to establish the existence of a genuine material
18 issue." J. Geils Band Employee Benefits Plan v. Smith Barney
19 Shearson, Inc., 76 F.3d 1245, 1251 (1st Cir. 1996), cert. denied,
20 519 U.S. 823 (1996). An issue is genuine if it "must be decided at
21 trial because the evidence, viewed in the light most flattering to
22 the non-movant, would permit a rational fact finder to resolve the
23 issue in favor of either party." Remington Inv., Inc. v. Quintero &
24 Martinez Co., 961 F. Supp. 344, 350 (citing Mulero-Rodriguez v.
25 Ponte, Inc., 98 F.3d 670, 673 (1st Cir. 1996)).

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2 On the other hand, if "the non-moving party rests merely upon
3 conclusory allegations, improbable inferences, and unsupported
4 speculation," Fennell v. First Step Designs, Ltd., 83 F.3d 526, 535
5 (1st Cir. 1996), then the court must grant summary judgment in favor
6 of the moving party. "The mere existence of a scintilla of evidence
7 in support of the plaintiff's position will be insufficient; there
8 must be evidence on which the jury could reasonably find for the
9 plaintiff." Landrau Romero v. Caribbean Restaurants, Inc., 14 F.
10 Supp.2d 185, 188 (D.P.R. 1998) (citing Anderson v. Liberty Lobby,
11 Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).
12

13 THE CIVIL FORFEITURE STATUTE

14 The Government seeks to forfeit the defendant currency pursuant
15 to 21 U.S.C. § 881(a)(6) which provides that property constituting
16 proceeds traceable to the illegal exchange of controlled substances
17 is subject to forfeiture to the United States.

18 21 U.S.C. § 881 provides, where pertinent:

19 (a) The following shall be subject to forfeiture to the
United States and no property shall exist in them:
20 . . .

21 (6) All moneys, negotiable instruments, securities, or
other things of value furnished or intended to be
furnished by any person in exchange for a controlled
substance in violation of this subchapter, all proceeds
traceable to such an exchange, and all moneys, negotiable
instruments, and securities used or intended to be used
to facilitate any violation of this subchapter...

22 The Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"),
23 applies only to those forfeiture proceedings "commenced on or after
24 [August 23, 2000]." See Pub. L. No. 106-185, § 21, 114 Stat. 202,

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3 225, 18 U.S.C. § 983, historical and statutory notes (U.S.C.A. Supp.
4 2000). This forfeiture proceeding was commenced on June 14, 2001,
5 therefore it falls under CAFRA. This is crucial because CAFRA
6 heightened the threshold the government must meet in order to find
7 probable cause to seize property.

8 As such, under CAFRA, seized currency is subject to forfeiture
9 if it was furnished or intended to be furnished in exchange for a
10 controlled substance, is traceable to such an exchange, or was used
11 or intended to be used to facilitate any violation of subchapter 21
12 of the United State Code. 21 U.S.C. § 881(a)(6). In a civil
13 forfeiture proceeding, the burden of proof is on the government to
14 establish, by a preponderance of evidence, that the property is
15 subject to forfeiture. 18 U.S.C. § 983 (c)(1).

16 Moreover, as in this case, if the government's theory is that
17 the property/currency was used to commit or facilitate the commission
18 of a criminal offense, or was involved in the commission of a
19 criminal offense, the government must "establish that there was a
20 substantial connection between the property and the offense." 18
21 U.S.C. § 983(c)(3). See e.g. United States v. Armstrong, 722 F.2d
22 681, 686 (11th Cir. 1984) (discussing probable cause in the context
23 of a seizure). It is important to note that in this action,
24 inasmuch as the forfeiture was carried out pursuant to 21 U.S.C. §
25 881(a)(6), not just any criminal activity will support the

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3 forfeiture: the criminal wrongdoing must involve "the exchange of a
4 controlled substance." Id.

5 As explained by this District Court in United States v. \$21,
6 \$10.00; \$10, 240.00; and Gent's Rolex Watch, 292 F. Supp. 2d 318
7 (D.P.R. 2003) "First Circuit opinions defining the preponderance-of-
8 the-evidence standard are few and far between. On one occasion, the
9 First Circuit noted the standard was met when, '[a]fter the evidence
10 has been weighed, th[e] proposition is proved if it is made to appear
11 more likely or probable in the sense that actual belief in its truth,
12 derived from the evidence, exists in the mind or minds of the
13 tribunal notwithstanding any doubts that may still linger there'."
14 Id. at 321. (citing O'Leary v. U.S. Lines Co., 215 F.2d 708, 715-716
(1st Cir. 1954)).

15 The controlling issue is whether, consistent with the summary
16 judgment standard, the government has presented sufficient evidence
17 to connect an alleged illegal drug trafficking activity to the
18 currency; put another way, taking the record in the light most
19 favorable to the government, has it shown --as required-- more than
20 a mere suspicion that the currency facilitated the sale of drugs?
21 See, Gent's Rolex Watch, 292 F. Supp. at 321; United States v. Parcel
22 of Land & Residence at 28 Emery Street, 914 F.2d 1, 4 (1st Cir.
23 1990).

24 Having considered all of the evidence presented by all parties,
25 the Court finds that the government can offer only the following
26

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3 undisputed facts in support of the forfeitability of the defendant
4 currency:

- 5 (1) the DEA Task Force Agents Borges and Lebrón observed signs
6 of nervousness in claimants GONZALEZ and REYES when they
7 arrived in Puerto Rico from New York;
- 8 (2) Both claimants purchased one-way tickets in cash.
- 9 (3) Both claimants consented to be interviewed. Claimants
10 both claimed to be traveling alone. GONZALEZ acknowledged
11 carrying a large amount of currency.
- 12 (4) Agent Borges searched REYES' suitcase after obtaining
13 claimant's consent. He found \$38,760.00 in cash in the
14 pant leg of a pair of blue jeans. REYES' offer to provide
15 the documentation as to the legality or source of funds at
16 that time was ignored.
- 17 (5) Agent Lebrón searched GONZALEZ' suitcase after obtaining
18 claimant's consent. She found \$58,920.00 in cash also
19 inside a pair of jeans. GONZALEZ was unable to offer at
20 that time, the documentation as to the legality or source
21 of the monies. His offer to provide the documentation for
22 the agents at a later time was ignored;
- 23 (6) After being questioned, and after the search had been
24 effected, REYES changed his original statement and stated
25 that he had indeed traveled with GONZALEZ;
- 26 (7) No drugs or narcotics were found in either suitcase
despite the positive K-9 results to narcotics.

20 DISCUSSION

21 Large Amount of Cash

22 Although this Court acknowledges that carrying a large amount
23 of cash may indicate criminal activity, it is in fact not necessarily
24 illegal to transport money, interstate in this manner. We observe
25 that this conduct, while possibly suspicious, is perfectly legal
26 under this particular scenario, and within the right of both

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2 claimants. Section 881(a)(6)'s probable cause standard cannot be
3 interpreted so broadly as to inherently penalize legal conduct.
4

5 A large amount of cash does not -- alone - satisfy the
6 government's burden to show probable cause. United States v. \$
7 121,100.00 in United States Currency, 999 F.2d 1503, 1506-1507 (11th
8 Cir. 1993). In addition, to support a forfeiture under § 881, there
9 must be a link to criminal activity, which activity must involve a
10 narcotics transaction. The government simply has not met its burden
11 here.

12 Although the evidence presented in support of probable cause
13 need not "point to drugs to the exclusion of all other theories."
14 \$ 121,100.00, 999 F.2d at 1508, under § 881, the probable cause must
15 be probable cause to believe a specific thing. Under § 881(a)(6),
16 the Government must evidence a connection, beyond proof, that a drug
17 crime may be one of several similarly likely possibilities -- between
18 the seized money and an illegal narcotics transaction. The way the
19 money here was packed, inside blue jeans, while possibly suggestive
20 of some criminal activity, does not assist in making a more specific
21 connection to drug crime.

22 That the currency was concealed in claimants' clothes adds next
23 to nothing.¹

24 ¹ In a similar case the District Court for the District of
25 Massachusetts took into account claimant's national origin in
26 determining probable cause, citing various studies and surveys which
indicated that Hispanics tend to travel with cash instead of using
checks, credit cards or travelers checks reflecting a cultural lack

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2 Accordingly, this Court gives no consideration as to claimants'
3 national origin in determining probable cause.
4

5 **Purchase of Tickets With Cash**

6 We next consider that claimants purchased their tickets with
7 cash. Business travelers often purchase airline tickets with credit
8 cards or checks while drug couriers often do not, and this
9 circumstance is an appropriate consideration when evaluating probable
10 cause in the totality. \$ 121,100.00, 999 F.2d at 1507 (citing United
11 States v. Socolow, 490 U.S. 1, 109 S. Ct. 1581, 1586, 104 L. Ed. 2d
12 1 (1989)). However, in saying this, we do not mean to imply that the
13 government can obtain forfeiture by showing the claimant's acts
14 deviated from some vague reasonable-business-person standard. The
15 standard is clear; the government must establish probable cause

16 _____
17 of confidence of Hispanics in financial institutions. See United
States v. One Lot of \$14,665, 33 F. Supp.2d 47 at 54 (D. Mass. 1998)
and studies cited therein.

18 This Court declines to take national origin into consideration
19 in a determination of probable cause for the following reasons:

20 1) the surveys cited in the aforementioned case reflect the
21 so-called "cultural habits" of a certain segment of the
Hispanic population. Not all Hispanics distrust financial
institutions. It depends on their economic, education and
social class;

22 2) Further, a mischief is created by the problem of
determining who or what constitutes a Hispanic; a task so
fraught with imponderables that it boils down to an
exercise on futility, if not resulting in a time consuming
side issue.

23 3) A question is raised as to how the weighing of probable
cause would apply if one of the claimants was allegedly
Hispanic and the other a non-Hispanic.

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2 beyond the preponderance of the evidence to believe that a
3 substantial connection exists between the forfeited currency/property
4 and an illegal drug transaction. Moreover, the method claimants used
5 to pay for their airline tickets, does little (if anything) to
6 connect the money to an exchange of controlled substances, especially
7 when both claimants were traveling with tickets purchased under their
8 own names, and at all times produced identification to confirm their
9 identity.

10 **Nervousness and Conflicting Stories**

11 Aside from the natural nervousness that can occur when
12 traveling, claimants' apparent nervousness is of minimal probative
13 value, given that claimants were carrying a large amount of currency
14 in their luggage, which could be robbed or lost. U.S. v. One Lot of
15 U.S. Currency (\$ 36,634), 103 F.3d 1048 (1st Cir. 1997). Regardless
16 of the source of the money, for security reasons, most travelers
17 would be reluctant to draw any type of attention to themselves.

18 If you further consider that many, if not most, individuals can
19 become nervous or anxious when detained by police officers, the
20 nervousness is more than justified, e.g., United States v. One Lot of
21 United States Currency (\$ 14,665), 33 F. Supp. 2d 47, 55 (D. Mass.
22 1998) (noting that claimant's nervousness during interaction with law
23 enforcement officers "is not an unreasonable response, regardless of
24 the source and intended use of the currency").

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2 Furthermore, this does not suggest involvement in some
3 unspecified furtive activity; or more specifically, that claimants
4 had engaged, or were about to engage, in a drug related transaction
5 with this currency. E.g., United States v. \$ 5,000 in United States
6 Currency, 40 F.3d 846, 850 (6th Cir. 1994) (stating that claimant's
7 evasive explanation of purpose of trip provided, at best, "inchoate
8 and unparticularized suspicion").

9 In this regard, we further point out that claimants'
10 "suspicious" actions consisted mostly of providing inconsistent
11 answers concerning the fact that they had traveled together, but the
12 discrepancies cited by the government are not great. In any event,
13 to the extent that the claimants' somewhat inconsistent answers might
14 be suggestive of possible involvement in some criminal activity, we
15 do not view the inconsistencies as a strong indication of the
16 requisite narcotics nexus.

17 **K-9 Alert**

18 The narcotics-detection dog's alert to the currency may also be
19 worth noting, although perhaps worth little else. The probative
20 value of dog alerts to the smell of narcotics on currency has been
21 called into question of late. See United States v. \$ 506,231.00, 125
22 F.3d 442, 453 (7th Cir. 1997); United States v. \$ 53,082.00, 985 F.2d
23 245, 250 n.5 (6th Cir. 1993). In fact, it has been demonstrated that
24 as much as 70-80% of money in circulation may carry the residue of
25 narcotics.

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3 As the First Circuit Court stated in United States v. One Lot
4 of U.S. Currency (\$ 36,634), 103 F.3d 1048, 1055-56 (1st Cir. 1997),
5 "the dog's reaction, indicating that [claimant's] money had at some
6 point come into contact with narcotics, weighs some, but not a great
7 deal on the scale." It does retain some probative value, but it
8 alone is insufficient to establish probable cause for forfeiture.

9 Furthermore, the value of the K-9 alert is further diminished
10 by the dog's reaction to the claimants' currency. See United States
11 v. \$ 67,220.00 on U.S. Currency, 957 F.2d 280, 286 (6th Cir.
12 1992) (vague testimony surrounding the dog alert weakened its value
13 for probable cause). The dog alert, at best, tells us that this
14 currency (like most circulated currency) may have been exposed, at
15 some point, to narcotics. When combined with more compelling
16 evidence of a connection to a narcotics transaction, this kind of dog
17 alert may be probative; but it adds little in this case.

18 **SUPPLEMENTAL MOTION**

19 On January 21, 2003 the government filed a *Supplemental Motion*
20 *in Opposition to Motion for Summary Judgment*, advising that the
21 United States Customs Service had indicated that Claimant PATRICIO
22 GONZALEZ INOA was detained by Puerto Rico Police on January 9, 2003,
23 with approximately \$300,000.00 in his possession. The Puerto Rico
24 Police Department contacted the United States Customs Service and
25 USCS Special Agent Vargas interviewed GONZALEZ INOA.
26

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3 According to USCS Special Agent Vargas, claimant GONZALEZ
4 allegedly admitted that about \$28,000.00 of the \$58,920.00 (defendant
5 Property A) forfeited on February 20, 2001 was not his but belonged
6 to an individual known as "Rafita". The government claims that this
7 creates a genuine issue of material fact that the monies seized
8 originated, in part, from an illegal source. At the very least, the
9 government argues, it takes away GONZALEZ' standing to recover the
\$28,000.00 that allegedly belong to "Rafita".

10 In their Response to Government's Supplemental Motion in
11 Opposition to Summary Judgment, claimants aver that "[t]he recently
12 discovered evidence only pertains to the fact that PATRICIO GONZALEZ
13 has admitted that he is not the owner of the totality of the amount
14 he originally claimed. This fact cannot be disputed. With respect
15 to the rest of the money that he does claim is his, he has already
16 presented evidence as to its legal source."

17 As to claimant MIGUEL REYES, he has presented evidence
18 sufficient to establish his ownership of the money seized; the events
19 of January, 2003 have nothing to do with this claimant and cannot
20 affect his individual and independent claim to the seized monies.

21 **The \$28,000 Belonging to "RAFITA"**

22 As noted above, claimant GONZALEZ accepted that of the
23 \$58,920.00 seized on February 20, 2001, \$28,000.00 did not belong to
24 him but to an individual named "Rafita", who has not come forward to
25 claim these monies.

26

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2 As such, claimant GONZALEZ does not have standing to claim this
3 amount. This, of course, does not limit his standing to claim the
4 remaining \$30,920.00, for which he submitted uncontroverted evidence
5 of its legality.

6 **CONCLUSION**

7 The evidence presented by the Government in this action is not
8 sufficient to meet the probable cause standard, much less the current
9 standard of preponderance of the evidence to establish a nexus
10 between the defendant currency and any drug transaction or narcotics
11 organization. Taken in the light most favorable to the Government,
12 there is simply insufficient evidence to establish more than a mere
13 suspicion that claimants were involved with narcotics, and thereby
14 subject defendant properties to forfeiture. Furthermore, claimants
15 have produced uncontroverted evidence that the money seized
16 originated from legal sources.

17 In conclusion, in this case there is very little more than
18 vague, circumstantial evidence to establish or to tend to establish
19 that the money was drug-related. In fact, there is little more than
20 a "large sum of cash." Therefore, the government has not established
21 forfeitability by a preponderance of the evidence.

22 Accordingly, the Court hereby **DISMISSES** the above-captioned
23 action under Fed. R. Civ. P. 56, and hereby **ORDERS** that the United
24 States return to MIGUEL REYES the amount of **\$38,670.00** and to
25 PATRICIO RAFAEL GONZALEZ, the amount of **\$30,920.00**.

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2 Judgment to be entered accordingly.

3 IT IS SO ORDERED.

4 San Juan, Puerto Rico, this 6th day of September, 2005.

5
6 S/Raymond L. Acosta

7 RAYMOND L. ACOSTA
8 United States District Judge